Escrow Agreement For Operating Deficits

Previous editions are obsolete;

Replaces form HUD-92476-A (01/03)

U.S. Department of Housing and Urban Development Office of Housing OMB Approval No. 0000-0000 (Exp. 00/00/00)

HUD-92476a-M (Rev. 00/06)

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This ESCROW AGREEMENT FOR OPERATING DEFICITS (Agreement) made this		
day of, 20, by and between		
pal address is, (Lender), whose principal address is, and		
, and, (Borrower), whose principal		
address is, [and if appli-		
cable,(Depository Insti-		
tution), whose principal address is		
.1 (Agreement). in connec		
, State of, which Project [has been, is be-		
, State of, which Project [has been, is being, or will be] [constructed, rehabilitated, purchased or refinanced] from the proceeds		
of a Loan insured by HUD and made by Lender. (The definition of any capitalized		
term or word used herein can be found in this Escrow Agreement for Operating Defi-		
cits, the Regulatory Agreement between Borrower and HUD, the Note, and/or the Se-		
curity Instrument except that the term "Program Obligations" means (1) all applica-		
ble statutes and any regulations issued by the Secretary pursuant thereto that apply		
to the Project, including all amendments to such statutes and regulations, as they be-		
come effective, except that changes subject to notice and comment rulemaking shall		
become effective only upon completion of the rulemaking process, and (2) all current		
requirements in HUD handbooks and guides, notices, and mortgagee letters that ap-		
ply to the Project, and all future updates, changes and amendments thereto, as they		
become effective, except that changes subject to notice and comment rulemaking		
shall become effective only upon completion of the rulemaking process, and provided that such future updates, changes and amendments shall be applicable to the Project		
only to the extent that they interpret, clarify and implement terms in this Agreement		
rather than add or delete provisions from such document. Handbooks, guides, no-		
tices, and mortgagee letters are available on HUD's official website:		
(http://www.hud.gov/offices/adm/hudclips/index.cfm or a successor location to that		
site)-).		
DECITAL C		
RECITALS:		
A. HUD has issued a frirm commitment to insure said Loan pursuant to § of the National Housing Act, as amended, and Program Obligations, on which mortgage insurance Borrower is relying for financing of the Project		

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B. The <u>HUD fF</u>irm <u>eC</u>ommitment is conditioned upon assurance that additional funds be made available for Project purposes, primarily for the absorption of any deficits resulting from the operation of the Project during the initial period of occupancy.

AGREEMENT:

In consideration of the mutual promises and undertakings contained herein, and for the purpose of inducing the Lender to make and HUD to insure said Loan, the parties acknowledge and agree as follows:

 At or before initial endorsement of the Note by HUD for mortgage insurance, in accordance with Program Obligations Borrower shall deposit, or has caused to be deposited with Lender or subject to the control and order of Lender with a depository institution satisfactory to Lender in accordance with Program Obligations, the sum of			
in the Escrow may be released or allocated for the purposes indicated in this Agreement and for no other purpose without the prior written approval of HUD. The Escrow shall take the form of [specify as applicable]:			
□ ca	ash, and/or		
cro ta in te	ne or more unconditional, irrevocable letter(s) of redit issued to Lender by a banking institution, atched hereto as Exhibit "A". The rating of the issuge banking institution and the duration of such leter(s) of credit shall comply with Program Obligators.		

- 3. Disbursements from the Escrow may be authorized monthly with written HUD approval to meet any Cash Deficit in the operation of the Project for the time frame set forth in the following paragraph. The term "Cash Deficit" means the shortfall between Rents and Reasonable Operating Expenses.
- 4. Any unused balance remaining in the Escrow will be released at LenderBorrower's request and returned to Borrower at the later of twelve (12) months [{insert different number of months if required by Program Obligations}] after final endorsement or when the Project has demonstrated to HUD's satisfaction that the Project has

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achieved six (6) consecutive months of Break-Even Occupancy for each month of six (6) consecutive months [{insert different number of months if required by Program Obligations}]; except unused funds in the Escrow attributable to the Debt Service Reserve, if applicable, will be released once the Project has achieved six (6) consecutive months of Break-Even Occupancy for each month of six (6) consecutive months [{insert different number of months if required by Program Obligations}]. Break-Even Occupancy is defined as 1.0 debt service coverage [{insert different debt service coverage if required by Program Obligations}], based on all sources of Project income including ancillary income.

- 5. The Escrow, when in the form of cash, shall be held by Lender or a depository institution satisfactory to the Lender and in accordance with Program Obligations, in an account that is fully insured by the United States of America. Lender may, for purposes of this Agreementat any time, for any reason or no reason, draw upon any letter of credit included in the Escrow and convert the same to cash, which cash shall then be held and disbursed pursuant to the terms of this Agreement. Fees charged by Lender and Aany interest earned on the Escrow shall be governed by Program Obligationsaccrue to the account of Borrower.
- 6. The Escrow shallmay, at HUD's direction, be subject to immediate application to the Indebtedness in the if an Event of Default by Borrower under the Security Instrument occurs at any time.

Each signatory below hereby certifies that each of their statements and representations contained in this Agreement and all their supporting documentation thereto are true, accurate, and complete. This Agreement has been made, presented, and delivered for the purpose of influencing an official action of HUD in insuring the Loan, and may be relied upon by HUD as a true statement of the facts contained therein.

IN WITNESS WHEREOF, the parties have duly executed this Escrow Agreement for Operating Deficits as of the day and year first above written.

BORROWER:	LENDER:
By	Ву
Name and Title	Name and Title
DEPOSITORY INSTITUTION:	
 Ву	
Name and Title	
Attachment: Exhibit "A"	

Warning:

Any person who knowingly presents a false, fictitious, or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability, and administrative sanctions.

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EXHIBIT "A"

Form of Letter of Credit